

1894-061 Chancery Causes: Daniel B. Newberry vs. Adm. of John J. Newberry bc
Lee Co.

Ferguson, Glass, West, Horton, Hickam, Robinett, Hall

CA. Debt
T. Property

-Deed

Virginia: -

To the Honorable H. S. K. Morrison Judge of The
Circuit-Court of Lee County.

Humbly Complaining, Shew unto your honor, your
Orator Daniel B. Newberry, on behalf of himself and all
other contract-creditors of John J. Newberry late of Lee
County deceased, who shall come in and contribute to the
expenses of this suit; That the said John J. Newberry
departed this life on or about day of 18- and
was in his lifetime, and at the time of his death, justly
and truly indebted unto plaintiff, Daniel B. Newberry in the
principal sum of (\$500.) five hundred dollars with an
amount of interest thereon from the 10th day of Oct. 1887
till paid. Your Orator here alleges that the \$500. of aforesaid
with its interest aforesaid, is due this plaintiff for
lands sold to the decedent John J. Newberry, on the 10th
day of Oct. 1887, that the purchase price of said land was
\$800. as is shown by deed ^{copy of which is} herewith filed marked "A"
and prayed to be considered as part of this bill, Your
honor will see from said deed that your Orator retained
the title and occupancy of the said land until his death,
and \$300. of said purchase price was to be paid, \$150. to
Mary A. Glass & \$150. to Eliza J. Glass, within five years
from the date of death of your Orator, the balance \$500.
is justly due your Orator, no part of which has been paid
and has been due ever since the date of the deed herewith
filed. Your Orator says that John J. Newberry was
in his lifetime, and at the time of his death, possessed
of a very considerable personal estate; but your Orator
does not know whether or not it is sufficient to
satisfy and pay all his just debts and funeral expenses
And, he was also entitled and seized of considerable
real estate, and particularly the lands heretofore referred to.

And suspect further says that he was the owner of the said John Newberry
in a bond of \$103.33 due May 1st 1885 due At J. Morrison and with account
lyther with it interest your Orator paid in full and said note was delivered
to your Orator and it is here filed as a part of this record marked "B" (A. 1) and asked to
be considered as part of this bill and said note is due when the same
was paid from said land and said note is due when the same

1 as sold to the decedent by your Orator, that the said John
2 J. Newberry being so seized and possessed, departed
3 this life about ^{instately} day of 18- leaving a widow
4 Mary Newberry and Bena Newberry & Palmer
5 Newberry ^{+ Children} infants, & the said John J. Newberry
6 of his estate as may remain after the payment of all
7 debts, expenses of administration etc; that due administration
8 of the estate of the said John J. Newberry was duly granted
9 by the County Court of Lee to H. T. Ferguson.
10 That under and by virtue of his administration, he the
11 said H. T. Ferguson hath become possessed of the whole
12 or the greater part of the said intestate's personal estate and
13 effects, and that his real estate has ever since been in the
14 possession of the said Administrator, widow, and heirs
15 of the decedent John J. Newberry as aforesaid. That not any
16 part of said debt has been paid your orator, but the whole
17 remains due and owing to him. That the said H. T. Ferguson
18 having possessed the said John J. Newberry's personal estate
19 and effects as aforesaid, has been applied to by your Orator
20 to pay and satisfy them, their said demand by and out
21 of such personal estate and effects as had come to his hands
22 but said Administrator wholly refused. All of which actings
23 and doings on the part of the said H. T. Ferguson et al.,
24 are contrary to equity and good conscience, and tend to the
25 manifest wrong and injury of your orator in the premises.
26 Your orator is advised that his claim is a prior lien on
27 the land sold by your orator to decedent, as a part of the purchase
28 price, the legal title by retention until said amt be paid.
29 In tender consideration whereof and forasmuch as your
30 orator is remediless in the premises save by the aid of
31 a court of equity, where matters of this nature are properly
32 cognizable and relievable. To the said Therefore That -

Justice may be done in the premises, your orator prays
that the said A. T. Ferguson as administrator of the
estate of the said John J. Newberry deceased and that
the said Mary Newberry, widow and Bana New-
berry & Palmer Newberry, ^{infants &c} may be made parties defendants
to this bill, and required to answer the same but they
need not answer on oath that being expressly waived
that an account may be taken by and under the decree of
this honorable Court, of the said debt so due to your orator
as aforesaid, and of all other debts which were owing by
the said testator ^{the time} at his death and which still remain unpaid
And that an account may also be taken of the said
testator's personal estate and effects received by or for the
use of the said A. T. Ferguson administrator as aforesaid
and that the personal estate and effects of the said John
J. Newberry dec. may be applied in payment of his said
debts in a due course of administration. And in case it
should appear that the whole of said personal estate has
been exhausted and applied to the payment of debts, ^{and your orator still unpaid} then
your orator prays that this honorable Court decree that
the real estate in this bill mentioned, or so much of it as is
necessary, be sold to satisfy your orator's debt, and
that all proper parties be decreed to join in such sale, and
that the money to arise from such may be paid to your
orator to the full extent of his claim. And that your
orator and all other unsatisfied creditors of the said
John J. Newberry dec. have such further and other
relief in the premises as to the Court may seem meet
and the circumstances of the case require.

May it please, and your orator will ever pray
M. M. Ely.
Jackson & Blankenship } P. O. D.

1st January Rules 1894

Laniel B. Newberry Off.

VS Billie Phaucery

H. F. Ferguson Adm. et al. Def.

Exhibit "A" filed.

1894 1st Jan'y Rules Bill
filed Sp. & Id. et al.

Ex. L. filed & D. nisi

" 2nd Jan'y Rules D. nisi
caused & cause set
for hearing by Off.

" Mar Term Decree Contd

" June Term Decree final

" Clay ord 4 Page 19

Plffs costs

C 5.13

S 2.00

GA L 5.00

Court 50.00

Wit 4.00

\$66.13

Defts Costs Recovered

C 2.44

Wit 2.50

A 15.00

Co C 25

\$20.19

This Deed made this 10th Day of October 1887 between Daniel B. Newberry and Miriam his wife of the first part and John J. Newberry of the second part all of the County of Lee and State of Virginia. Witnesseth that in consideration of the sum of eight hundred Dollars ^{hand} paid and secured to be paid by the party of the second part to the party of the first part, ^{the} said party of the first part by these presents give grant bargain, sell deliver and convey unto the party of the second part a certain tract or parcel of land lying & being in said County of Lee & on Sawells Mountain and Wallens Ridge containing one hundred & thirty one acres more or less and bounded as follows. Beginning at a Mulberry Corner to Ben Hills land and with lines thereof S 47° E 18 poles to an Ash thence S 22° W 14 poles crossing the creek to a Beech on south bank thereof thence S 21° E 79 poles to a Stake in the Taylor line it being understood by the parties as it is now running thence with the same N 65° E to George Gass Eastern line to the top of the Mountain and then with the top of the Mountain to the conetional line a chestnut oak between George Hickam & said Daniel B. Newberry thence N 20 1/2° W to a Stake near a Dead chestnut in George Hickams field a division line between Samuel M. Newberry and John J. Newberry running westward to a Mulberry in George Glass line thence one half pole.

East of Glass line and Down same to Taylor's line
 Crossing same one rod below Wm G Glass's line
 Westwardly to Conditional line between Stephen McPherson
 and Miriam A Brashier and with said Conditional line
 crossing the creek to a dogwood to a beginning corner of the Division corner on Wm
 W. Sages line on Wallens Ridge thence $N 38^{\circ} E$
 poles to a white oak in Campbell's line and thence
 with the same $N 29 \frac{1}{4}^{\circ} E 84$ poles to the Beginning
 corner on a white oak on a Dividing line between
 said Sages and a and a piece of land purchased by
 him from Wm Persons on Campbell's line on the
 top of a Ridge thence $N 16^{\circ} W 104$ poles to a Stake in
 Taylor's line thence $S 58^{\circ} W$ with Taylor's line $79 \frac{1}{2}$
 poles to ^{two} small gums thence $87^{\circ} W 33$ poles to two
 gums & white oak thence leaving the Taylor line
 and running with Ross line $S 1 \frac{1}{4}^{\circ} W 140$ poles to
 a poplar, white oak and hickory thence East westerly
 to 3 chestnuts near the forks of a road thence
 Southwardly to 2 Saurwoods, white oak & Poplar
 thence $S 95 \frac{1}{2}^{\circ} E 26 \frac{1}{2}$ poles to a white oak $S 67^{\circ} W 16$
 poles to a Stake in Ross branch in the Benjamin
 Hill line down said branch $38 \frac{1}{2}$ poles to a
 Stake therein thence $S 83^{\circ} W 58$ poles to a Stake
 and thence $S 21^{\circ} E 40 \frac{1}{2}$ poles to the Beginning it being
 understood & agreed between the parties that
 the title and occupancy of said land is to remain
 in party of the first part during the lifetime of

said Daniel B. and Miriam Newberry and that \$500
 to be paid Eliza J Glass & same amt to Mary A.
 Glass is included in the \$800.00 named as the
 consideration of this Deed and said amt of \$300.00
 is to be paid by ^{John} Newberry within five years
 from this Date at Death of said parties of the first
 part. To have and to hold said tract or parcel
 of land unto the said John J Newberry and his heirs
 forever and said party of the first part hereby covenants
 that they will warrant generally the title to the land
 hereby conveyed. Witness following signatures and seals
 Daniel B. Newberry *Seal*
 Miriam Newberry *Seal*

Virginia Lee county to wit:

John B West a Notary Public for
 said County and State do certify that Daniel B.
 Newberry ^{and Miriam J Newberry} whose names are signed to the foregoing
 Deed dated October 10th 1887 personally appeared
 before me in ^{said} County and acknowledged said wor-
 king to be their act and Deed the said Miriam wife
 of Daniel B. Newberry of said being examined by
 me privily & apart from her said husband and hav-
 ing said writing fully explained to her she declared
 that she had willingly signed and executed the same
 and does not wish to retract it. Given under my
 hand this 10th day of October 1887.
 John B West N.P.

Virginia Lee County Court Clerks office the 12th Day of
Oct 1887. The foregoing Deed bearing date Oct 10th
1887 between Daniel D Newberry and Miriam his
wife of the one part and John J Newberry of the
other part all of Lee County Va^a was this day filed
in this office and admitted to record upon the
foregoing Certificate.

Teste John R Gibson Clerk
A Copy Teste: D. W. Richmond Clerk

"
D"

D. B. Newberry.
To { { { Deed.
John J. Newberry.

To the Honorable H.S.K. Morrison, Judge of the Circuit Court of Lee County, Virginia:

The separate answer of Buna Newberry and Palmer Newberry, infants under the age of twenty one years, by E.W.R. Ewing, their guardian ad litem, assigned to defend them in this suit, to a bill of complaint exhibited against her and others, in the circuit court of Lee county, by Daniel B. Newberry.

The respondents, reserving to themselves the benefit of all just exceptions to the said bill, for answer thereto, or to so much thereof as they are advised that it is material they should answer, by their guardian ad litem, answer and say:--

That they are infants of tender years, and by reason of their infancy, are incapable of understanding, or of taking care of their right and interests; That Henry T. Ferguson, their step father and administrator of the estate of their late father, John J. Newberry, and Mary Ferguson, their mother, have prepared their answers to said bill, and respondents pray that their said answer may be made a part of this thier answer. They, by their guardian ad litem, commend themselves and their rights and interests to the protection of the court, and pray that no decree may be pronounced which will tend to their prejudice.

And having fully answered, the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended, and they will ever pray, &c.

E. W. R. Ewing,

Guardian ad litem for Buna and Palmer Newberry.

Duncan & Hyatt, p.d.

*Sworn to before me by E W R Ewing Guardian ad Litem
J A B Munsey Clerk*

H. S. Ferguson, Advers. et al.

ads { G. A. L. Answer

Daniel B. Newberry

Filed at 1st Jan 1894
Ar3 Munsey Clk

G. ad litens

Fee \$5-00
Paid by D. B. Newberry.

To the Honorable H.S.K. Morrison, Judge of the Circuit Court of Lee County, Virginia:

The separate demurrer and answer of Henry T. Ferguson, Administrator of the estate of John J. Newberry, deceased, to a bill in chancery exhibited against him and others in this honorable court by Daniel B. Newberry.

Respondent says that complainant's bill is not sufficient in law to call upon him to answer it in this honorable court, but that there is good cause of demurrer thereto, and he demurs accordingly, and prays judgment of his said demurrer, &c. And not waiving said demurrer, but reviving and insisting thereon, should other and further answer be required of him answering, he says:

That he has read over carefully the answer of his co-defendant, Mary J. Ferguson, formerly Mary J. Newberry, late widow of John J. Newberry, deceased, and he adopts said answer for and as a part of his answer in this case and asks that it may be treated as such. Further answering, respondent says, that it true that the estate of John J. Newberry, decd., was committed to him for administration, and that he has fully administered the same, and on the 22nd day of February 1893, he made his settlement before John A.G. Hyatt, Commissioner of Accounts for Lee County, which settlement shows that he has fully accounted for every cent of said estate which came into his hands. This settlement was duly confirmed by an order of the Circuit Court of Lee County made on the 14th day of March 1893, and recorded in the proper book in the Clerk's office of said court, all of which will more fully and at large appear by reference to said commissioner's report with the endorsements thereon, a copy of which is here filed marked "A5".

Respondent will further show your honor that on the 6th day of September 1892, he, as administrator paid to the complainant in this cause \$21.09 in full of all dues and accounts which he the said Daniel B. Newberry had or held against the estate of the said John J. Newberry, decd., a copy of said receipt is filed as exhibit "3" with the answer of respondent's co-defendant Mary J. Newberry, and he here refers to said copy and makes it a part of this answer.

Respondent will now show your honor that on the 10th day of April 1893, out of his own funds he paid to James F. Glass, Guardian for the

children of Mary A. Glass, deceased, the sum of \$154.50 in full of principal and interest of the sum which the said John J. Newberry was to pay Mary A. Glass as shown by the deed from Daniel W. Newberry and wife to John J. Newberry, which deed is filed as exhibit "A" with complainant's bill. Respondent took a receipt from the said Glass to himself as administrator of the estate of John J. Newberry, deceased, and said receipt is herewith filed as part hereof marked "AC".

Respondent is informed that the claim set up in the plaintiff's ~~bill~~ bill for said sum of \$500.00 is only an open account against his decedent's estate, which said account or the sum of money therein named, his said decedent did not assume to pay within five years next before the institution of this suit. And Respondent further avers that the claim for \$103.33 founded upon the note or bond filed as exhibit "A1" with plaintiff's bill is likewise a simple account, and that his decedent did not assume to pay that sum or any part thereof within five years next before the institution of this suit, and so plaintiff says that both of said claims, even if they ever had any existence in fact, are barred by the statute of limitations, the benefit of which statute he here invokes as a defense to said unjust claims.

Respondent further says that the estate of John J. Newberry, decd. does not owe one single cent of money so far as he knows, and as administrator he has used diligent efforts to find out if there were any outstanding debts against it, except the sum of \$154.50 which he paid to the guardian of the heirs of Mary A. Glass, deceased, as aforesaid, and he seeks no relief for that sum ~~in this case~~ in this suit. And now having answered said bill as fully as he is advised it is material that he should answer, respondent prays to be hence dismissed with his costs &c.

Duncan V. Hyatt *pd*

Henry T. Fergusson, At

Ads. $\frac{1}{2}$ Answer.

Daniel B. Newberry

Filed in open court March
the 12th 1894

A B Munsey clerk

April The 10th 1893.

Received of Henry H. Herganson Administrator
of the estate of John J. Newberry Deceased.
The sum of one hundred and fifty four
dollars and fifty cents \$154.⁵⁰ The
amount in full principal & interest to
the above date which the said John J.
Newberry was to pay to Mary A. Glass
as shown by deed from Daniel B. Newberry
and wife to John J. Newberry. The above
named sum being paid to me (H. H.
Herganson Admr) as guardian for the children
of said Mary A. Glass &c.

M. J. Glass

James F. Slaps
Receipt

To the Honorable H.S.K. Morrison, Judge of the Circuit Court of Lee County, Virginia:

The separate demurrer and answer of Mary J. Ferguson, late widow of J.J. Newberry, deceased, to a bill in chancery exhibited against her and others in this honorable court by Daniel B. Newberry.

Respondent says that complainant's bill is not sufficient in law to call upon her to answer it in this honorable court, but that there is good cause of demurrer thereto, and she demurs accordingly, and prays judgement of ~~her~~ said demurrer &c. And not waiving said demurrer, but relvins and insisting thereon, should other and further answer be required of ~~her~~ answering she says:

That it is not true that her late husband, John J. Newberry, was at the time of his death, justly indebted to the complainant in the sum of \$500.00 with an arrear of interest thereon from the 10th day of October till paid, nor in any other amount except two small accounts which will now be referred to. On the 30th day of May 1892 the said Daniel B. Newberry the complainant, presented to H.T. Ferguson, Administrator of the estate of J.J. Newberry against said estate amounting to \$17.75 as he claimed, and on that day said Administrator paid to him \$14.00 in full of so much of said account as was proven, as will more fully appear by reference to a receipt dated on the 30th day of May 1892 and filed by said Administrator as voucher No. 6 in his settlement of the estate ~~of~~ the said John J. Newberry deceased with the Commissioner of Accounts for Lee County Virginia, copies of which account and receipt are herewith filed as a part of this answer marked "1". Afterwards as respondent was informed the complainant presented another account to the said H.T. Ferguson, Administrator of said estate, amounting to \$27.16 and on the 6th day of September 1892, the said Administrator paid him the sum of \$21.09 and took his receipt therefor in which the said complainant acknowledged that said sum of \$21.09 was in full of all dues and accounts against the estate of the said John J. Newberry which will more fully appear from a copy of Voucher No. 20 filed by said administrator in the settlement of his account as administrator of the estate of John J. Newberry, deceased, a copy of which voucher is here filed as part hereof marked "2". It is true that her late husband the said John J. Newberry, on or about the 10th day of October 1887 agreed with his father the said

Daniel B. Newberry for the purchase or rather conveyance to him of the tract of land described in exhibit "A" filed with complainant's bill. The terms and the nature of that contract is as follows: Some time previous to the date of said deed the said complainant who was then old and becoming too infirm, as he thought, to manage and control his lands, divided the same among his four sons, to wit, Samuel M. Newberry, J.K.P. Newberry, David Newberry, and the said John J. Newberry, by the terms of which agreement the said four sons were to pay each to his daughters the sum of \$100.00, and to furnish to the said Daniel B. Newberry and his wife a comfortable support and maintenance during the remainder of their lives, but before this arrangement was consummated by conveyances the said J.K.P. Newberry and David Newberry determined that they preferred to sell their interests in said lands and thereupon the said John J. Newberry, by and with the consent of his father Daniel B. Newberry, purchased from the said James K.P. and David their interests at the price of \$250.00 each, and thereupon, to wit, on the 10th day of October 1887, the said Daniel B. Newberry and Mariam his wife made and executed the deed mentioned in the ^{said} bill. The land thus mentioned is the three shares laid off and intended by the said Daniel B. Newberry for the said three sons J.K.P., David, and John J. Newberry, the said Samuel M. Newberry keeping his share as laid off to him, and the said John J. Newberry became bound by the terms of said deed to pay to his sisters Mary A. Glass and Eliza J. Glass the sum of \$150.00 each, being what was intended to be paid by himself and his two brothers David and J.K.P. Newberry under the first proposed arrangement. Said \$300.00 and said \$500.00 which he had agreed to pay to his two brothers makes the full consideration of \$800.00 mentioned in said deed, every cent of which has long since been paid. The said David Newberry was fully paid by the said John J. Newberry in his lifetime, the balance due to J.K.P. Newberry to wit the sum of \$70.00 was paid to him by the said H.T. Ferguson, Admr. as aforesaid on the 4th day of May 1892 as will more fully appear by reference to his receipt filed as voucher No. 9 by the said Administrator with his settlement a copy of which is herewith filed as a part hereof marked "3", and on the 25th day of January 1893 respondent and H.T. Ferguson as administrator paid to Eliza J. Glass \$152.65 in full of the \$150.00 mentioned in the deed from the said Daniel B. Newberry to

the said John J. Newberry and required to be paid by the said John J. Newberry to the said Eliza J. Glass. Of this sum the said H.T. Ferguson ⁴ is administrator paid the sum of \$27.65 and your respondent paid \$125.-00 the residue thereof, all of which will more fully appear by reference to voucher No. 19 filed by said administrator with his settlement, a copy of which is here filed as part hereof marked "4". Respondent has been informed by the said H.T. Ferguson that he has fully paid to James F. Glass, the guardian of the infant heirs of Mary A. Glass, the full amount of the \$150.00 required to be paid to the said Mary A. in said deed, amounting at the time of payment principal and interest to something over \$154.00. Said receipt will be filed with the answer of the said H.T. Ferguson to which reference is here made. It is true that in said deed the complainant retained the title and occupancy of said land during his life which said retention he has been very careful to assert, as he now has the full occupancy of said land, has entirely crowded respondent and her two little children out and left them to shift for themselves. Respondent says that not one cent of the note for \$103.33 filed by the complainant as exhibit "A1" by complainant is due or owing to the said complainant. Said note of \$103.33 is one of the installments of the purchase price of a tract of land which the said Daniel B. and J.J. Newberry jointly purchased from H.J. Morgan, each of said parties was to pay one half of the purchase price of said tract of land and each was to have one half thereof, and the said John J. Newberry in his lifetime, as he informed respondent, paid his part thereof and paid \$50.00 for his father which has never yet been repaid to him or to his administrator. It is true that the said John J. Newberry at the time of his death had a personal estate of some value which has been administered by Henry T. Ferguson fully as she is informed and settlement thereof duly made and confirmed in the proper court. Respondent again denies that there is one cent due to the complainant from the estate of her late husband the said John J. Newberry, deceased, on the other hand every cent and more, which the said John J. Newberry owed to his father has been paid, and now having fully answered, and praying the court to fully protect her interest and that of her children she prays to be hence dismissed with her costs &c.

Duncan K. Hyatt, Jr.

Mary J. Ferguson et
vs. ~~the~~ Answer.

Daniel B. Newberry
Filed in open court March the
12th 1894
A B Munsey clerk

Daniel B. Newberry.

Plaintiff.

vs.

In chancery.

H. T. Ferguson, Admr. &c. et als.

Defendants.

This cause came on again this day to be heard upon the papers formerly read herein and the report of B. W. R. Ewing, Special commissioner, filed in said cause on the 24th day of May 1894, *and was argued by counsel.* and exceptions filed thereto by the defendants. On consideration whereof said exceptions are sustained, and it is therefore adjudged, ordered and decreed that said bill be dismissed, and that the defendants recover of the plaintiff their costs about their defense in this behalf expended to be taxed by the Clerk for which execution may issue. And the cause is stricken from the docket.

D. B. Newberry
vs $\frac{1}{2}$ Deere
Hireal.

H. T. Ferguson Adm. & c.

Ent on Chy. Ord. Book 40. 19.
H

Enter this debt

W. L. H.

June. 12th 1894

Daniel B. Newberry.

Plaintiff.

vs.

In Chancery.

Henry T. Ferguson, Admr. et als.

Defendants.

This cause came on this day to be heard upon the bill of complainant, and exhibits therewith, the answer of the infant defendants by E.W. R. Ewing their guardian ad litem filed at the first January Rules 1894, the demurrer and answer of the defendants Henry T. Ferguson, Admr., and Mary J. Ferguson and exhibits therewith and general replication to each of said answers, and was argued by counsel. On consideration whereof, and the court deeming it necessary, it is adjudged, ordered and decreed that E.W.R. Ewing, who is appointed a commissioner for the purpose, after giving due notice of the time and place of his sitting, do convene the creditors of John J. Newberry, deceased, if any, ascertain the amount of the amount of the indebtedness of the estate, to whom due, and the priorities thereof, if any. Said commissioner will hear any proof offered by any of the parties, reduce the same to writing and file the same with his report. Said commissioner will further ascertain whether or not H.T. Ferguson has duly administered the personal estate of said decedent, and properly accounted for all sums received by him, his standing with said estate, and whether or not he has made settlement with the proper commissioner. Said commissioner will report any other fact required by any of the parties or deemed pertinent by himself. And the cause is continued.


~~~~~  
Daniel B. Newberry

vs. ⚡ Deere No. 1.

H. F. Fergusson Adm. et al.

~~~~~  
E.C.D.B. Page 596
March 15th 1894

Enter this decree.

March 15th 1894.

H.S.N.M.

~~~~~

2000



Commissioners Office. February 22<sup>nd</sup> 1873

To the Circuit Court of Lee County

Your Commissioner reports to the Court, that  
on the 1st day of January 1873

H. J. Ferguson Admr of the Estate of J. J.  
Newberry, exhibited before your Commissioner  
a Statement of all money which he the said  
Ferguson had received or become chargeable  
with or disbursed within the time from April  
2<sup>d</sup> 1872 to Jan 1st 1873 together with <sup>the</sup> Vouchers  
of such disbursements; that the Commissioner  
embraced the said Admr in the list <sup>of fiduciaries</sup> whose  
accounts were before him for settlement which  
was posted at the front door of the Court house  
of said County, on the first day of Nov Court  
last, and on the date of this report (ten days  
having since elapsed) has made up and com-  
pleted the foregoing account of the said H. J.  
Ferguson as such Admr. <sup>and on</sup> the 1st day of  
January 1873 <sup>he</sup> he had fully accounted for  
all his liabilities by squaring his account  
The account is supported by satisfactory  
Vouchers, and is

Given under my hand as Commissioner  
of accounts of the said Court on the day  
and year first aforesaid

J. A. G. Hyatt Com'r a/ccts

A copy Teste

A. B. Munsey Clerk



*Adm.*  
H. T. Fergusson et als

vs. Copy.

Daniel B. Newberry.



Office of E.W.R. Ewing, Special Com.

May 15, 1894.

Pursuant to adjournment at my office on the above day.

Present G.W. Blankenship for the Plaintiff.

" Duncan and Hvatt for the Defendants.

James F. Glass, another witness of lawful age, being duly sworn deposes and says: -

Ques. 1. Are you acquainted with Daniel B. Newberry and if so how long have you known him?

Ans. I am acquainted with Mr. Newberry and have known him from fifteen to twenty years.

Ques. 2. Are you acquainted with the lands conveyed by the said D.B. Newberry and wife to J.J. Newberry by deed bearing date on the 10<sup>th</sup> day of October, 1887?

Ans. I am.

Ques. 3. Please state any thing you may know about said sale and conveyance of said land by said Daniel to the said John?

Ans. I was not present when any deeds were made, but I know ~~what~~ what each told me. Daniel was going to divide his land in four parts among his four sons, and the girls <sup>2</sup> were to have \$200 <sup>4</sup> each, there being two of the girls, before there was any deed made John buys out Dave and Jas., and was to give \$250.00 each, as I understood by all the parties concerned, after the trade they call Mr. West to make the deed. The old man and John and the others talked with me of the trade several times. Dave told me after the deed was made that he had got his, and James told ~~me~~ that he had got his.

Ques. 4. Please state whether the five hundred dollars mentioned in the deed is the same five hundred dollars which the said John J. Newberry was to pay to Dave and James?

Ans. From what the old man Newberry said, it was.

Cross-examination.

Ques. 1. Please state what the old man Newberry said?

Ans. He said, if they do not mind I will collect that five hundred dollars mentioned in the deed. He would talk this way

Witness attendance  
one day 15-0



(2)

when he got fretted at some of the family, as he often did, being very high tempered.

Ques. 2. Please state whether or not, if you know of your own knowledge, John J. Newberry was to pay Jas. and Dave the sums they have been paid, and in addition thereto the sum of five hundred dollars to Daniel B. Newberry, their father?

Ans. I do not know that he was to pay Daniel, his father, any thing. The old man told me that Dave and Jas. had sold out and that they had got more than he wanted them to have, that he did not want them to have more than the girls, and he seemed to be fêtted over, and talked a while like he would not make the deed to John.

Ques. 3. Please state when and where the conversations mentioned took place, and who were present.

Ans. He talked so much to me that I could not tell who were present. He talked at my bouse often and before my wife, who is now dead.

Ques. 4. When and before whom did he tld about this the first time?

I cannot tell where it was at or the first time.

Ques. 5. When, where and before whom did he talk the second time?

Ans. I do not remember when the second time was, it was s o many time. I took no note of any thing of this kind.

Ques. 6. When and before whom did he talk the third time?

Ans. There is no time that I can recall when any one was present at any of these conversations except my family.

Ques. 6. Please state how it is that you can so distinctly remember what the old man Newberry said to you about this land transaction when you cannot name a time or place, or give the name of any one present at any of these conversations except your wife whom you say is dead?

This question is objected to by the defendant because the witness has given the place where many of the conversations took place which D. B. Newberry had with him, to wit at his, witnesses dwelling house.

Duncan V. Hyatt for Deft



(3.)  
Ans. It was so often talked to me that I cannot note any time or place.

Ques.7. Please state any other consideration or agreement between the said D.B. Newberry and J.J. Newberry in regard to this land trade that you may know, that you have not heretofore mentioned, how you obtained your information, from whom, and all about it?

Ans. John was to support the old man and the old woman during their lives, both John and the old man told me this.

The last question and answer is objected to because the deed is the best evidence of the contract, and because this question and answer are not germane to the question made by the pleading in this case, and is responsive to no inquiry directed to be made by the commissioner.

*Duncan Hyatt, for Defts.*

Ques.8. Please state whether or not, if you know, there was an agreement between John J. Newberry and his father that in case he failed or refused to support and maintain him and his wife during their natural lives then that John was to pay the five hundred dollars named in the deed?

This question is objected to together with any answer for the reasons stated above.

*Duncan Hyatt, for Defts.*

Ans. I don't think that there was from the talk that the old man had. He said that if they did not do better he would rent the farm out. He never told me that such was or was not the contract.

Ques.9. Please state how long John J. Newberry lived with his father after the deed was made?

Ans. Some three or four years, up to his death.

Ques.10. Please state whether or not during that time you heard the old man complain or say that John was not properly taking care of him as he was to do?

This question is object to because irrelevant, immaterial, &c.

Ans. I heard him different times complain that if they did do better he was going to run out the land. He was hard to please and always complaining.



(4)

Re-examined.

Please state your relation to Daniel B. Newberry when the conversations of which you have spoken took place?

Ans. I was a son-in-law. I was a brother-in-law to John J. Newberry.

And more this witness does not say.

*James F. Glass*

J. B. West another witness of lawful age, being duly sworn, deposes and says:

Ques. 1. Please state if you ~~were~~ were acquainted with Daniel B. and J. J. Newberry?

Ans. I was.

Ques. 2. Please state if you ~~were~~ were called upon at any time to write and take the acknowledgement of a deed ~~for~~ D. B. Newberry and wife to J. J. Newberry?

This question is objected to because the certificate <sup>is</sup> ~~is~~ in writing and is the best evidence.

Ans. I was in the fall of 1887, October of that year. My memorandum book shows that it was on the 10<sup>th</sup> of that Month, I would not remember the date but for this book.

Ques. 3. I notice that the consideration mentioned in the said deed id \$800 in hand paid and secured to be paid, three hundred dollars of which, i. e., one hundred and fifty dollars each to Eliza J. Glass and Mary A. Glass, now please state if Daniel B. Newberry, told you how or to whom the other five hundred dollars had been or was to be paid.

Ans. Yes. He said that said five hundred dollars was to be paid to his boys, Dave and James.

Ques. ~~By~~ the plaintiff.

Ques. 1. How much was to be paid to Dave?

Ans. The way I understood it was that it was to be divided between the boys.

Ques. 2. When was it to be paid?

Ans. It was to be paid in five years, or upon the death of the

*Witness claims one day - 15-0*



(5-)  
old man.

Ques.3.What provision if any did he make for his son Melvin?

Ans. He did not state any to me.

Ques.4.Was there any further agreement there on that day in regard to this trade,if so what was it?

Ans. Daniel Newberry was to retain the title during his life time and John was to have possession.

Ques.5.Was there not a considerable wrangle or confusion there on that day in regard to the signing of that deed?

Ans.Daniel Newberry was complaining more than any one else.He complained as old people generally.I think that his digestion was wrong.

Ques.6.Please state what you know of Daniel Newberry's digestion?

Ans.From declarations of his.

Ques.7.Do you infact know any thing of Daniel Newberry's digestion?

This question is objected to because immaterial and impertinent.

Ans. Yes,sir,I do. He was a confidential friend of mine,and I went with him several time to relieve his stomache.

Ques.8.Please state whether or not D.B.Newberry did not complain on that day that he did not understand the deed and that from what he did understand about it,it was not drawn up according to his directions and wishes?

Ans. No,on the contrary he expressed great faith in the correctness of the deed.

Ques.9.How long has it been since you drew and took the acknowledgment of this deed?

Ans. Six years since the tenth of last October.

Ques.10 How often since the drawing of this deed have you recalled to your memory the consideration named in the deed,when and to whom the same was to be paid?

Ans. At least one half-dozen times.

Ques.11.Why is it that you recalled it to memory so often?

Ans.Because friends and patrons of mine called my attention to it.

Ques.12.Why did they call your attention to it?

Ans.Beause they were interested.



Ques.13.Please state what interest it was that caused parties to call your attention to this matter?

Ans. The natuaral interest that persons have to protect their rights.

Ques.14.Who called your attention to this deed and how often?

Ans.Mr.Horton,Mr.H.T.Fergusson and several of the Newberrys.

Ques.15.I do not know which of the Newberrys,I do not know the Christian name of all of them.

Ques.16.What Mr.Horton was it that called your attention to this deed and when awas it that he did so?

Ans.Mr.H.N.Horton,it was about two years ago when he first called my attention to it,and about one year ago,and yesterday morning.

Ques.17.When did Mr.Fergusson call your attention to this deed?

Ans.About two years since,and also yesterday morning.

Ques.18.Please state what interest Mr.Horton had in this matter?

Ans.I do not know the specific interest.

Ques.19.Please state what interest Mr.Fergusson had in this matter that caused him to call your interest to this matter two years ago?

Ans. I do not know that he had any special reason for calling my attention to the matter at that time,but suppose that he was talking to me as he was in the habit of doing about his business generally.

Ques.20 Please state if you remember the full consideration to be paid for this land,to whom it was to be paid,and in what amounts?

Ans. Yes,\$800.00 was the full consideration.One hundred and fifty dollars was to be paid to Mary Glass and one hundred and fifty to Eliza Glass and other five hundred to the boys,Dave and the other one I do not at this moment recall.

Ques.21.Please state how it is that you recalled the name of the other at the beginning of the taking of this deposition and can not recall it now?

Ans. I do not think that I did,I referred to the other and some one gave it to me.

Ques.22.Is it not a fact that counsel on the other side suggested to you their names and is that not why you recalled them then?

Ans.Only one,Judge Duncan suggested to me the name of the other,the one I did not recall.And more this witness does not say.

*John B. West*



H. T. Fergusson et al

ads. } Depositions.

D. B. Newberry et

~~~~~

Witness attend-
ance:

Frank Gloss .50

J. B. Heat .50

1.00

Office of E.W.R. Ewing, Special Commis'r

May 14, 1894.

The depositions of *H.N. Horton* and others, taken before me, E.W.R. Ewing, Special Commissioner, acting pursuant to decree entered in the case in which these depositions are to be read, by the Circuit Court of Lee county, Va., at its March term, 1894, and pursuant to adjournment, at my office in Jonesville, Va., on the 14th day of May, 1894, to be read in *behalf of* H.T. Fergusson, ~~Admr.~~, defendant, in a case now pending in the said court wherein D.E. Newberry is plaintiff.

Present: G.W. Blankenship for Plaintiff.

" Duncan *and* Hyatt for Defendant.

H.N. Horton, a witness of lawful age being ~~du~~ duly sworn, deposes and says:

Ques. 1. Please state if you ~~are~~ are acquainted with D.E. Newberry, the plaintiff in ^{du} this case, if so how long have you known him.

Ans. I am acquainted with said Newberry, and have known him fourteen or fifteen years.

Ques. 2. Did you know J.J. Newberry in his lifetime? How long since you became acquainted with him, and what relation did he bear to you, if any?

Ans. I ~~was~~ was acquainted with J.J. Newberry, he married my daughter I became acquainted ~~some~~ fifteen years since. He was therefore my son-in-law.

Ques. 3. If you ever had any conversation with D.E. Newberry in reference to the conveyance by him of the tract of land described in ~~the~~ exhibit "A" filed with the complainant's bill ~~to~~ J.J. Newberry, state what that conversation was?

Ans. I did have a conversation with D.E. Newberry in the ~~lifetime~~ lifetime of the said John. The old man told me that ~~he had~~ John had bought Dave and Jas. part in the land and was to pay them \$500. for it. He was to pay \$300 to the girls and then all the land was to be John's except Mel's, which had been laid off to him. This was not very long after the deed was made, but I do not

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remember just how long.

Ques.4. In that conversation did D.B. Newberry claim that J.J. Newberry was to pay him any thing, or to pay any one else any thing, except the five hundred dollars to Jas. and Dave, and the three hundred dollars to his two daughters?

Ans. He did not.

Ques.5. What would have been a fair cash value of that part of the home place conveyed by D.B. Newberry to J.J. Newberry at the time of the conveyance?

Ans. Think that it was worth one thousand dollars.

Ques.6. Please state whether or not \$800.00 would have been the fair cash value of that part of D.B. Newberry's lands conveyed to J.J. Newberry with the provision in said deed that the said D.B. Newberry was to retain the possession use and control of said lands during the life of himself and wife?

Ans. Yes, I think it was.

Cross examination.

Ques.1. Please state when the conversation related above took place?

Ans. Some time in the year the deed was made, and I was there. Not long after the deed was made the conversation took place.

Ques. Please state when the deed was made?

Ans. I do not know the year or month, but it has been some where near seven years ago, I think.

Ques.3. Please state who was present when this conversation took place?

Ans. John Newberry and his wife and Daniel and his wife, if any one else I do not remember.

Ques.4. Please state how it is that you remember so well that this conversation took place after the deed was made when you do not remember the time that the deed was made?

Ans. They all told me that West had been there and had written the deed, and it had been acknowledged.

Ques.5. Please state whether or not they told you the whole of the trade, or only a part?

Ans. Yes, they told me the whole of the trade, as I understood.

Ques. 6. Did they tell you the contents of the deed and the consideration therein named?

Ans. Yes, they did.

Ques. 7. Please state the contents of said deed, the consideration named therein, when, how, and by whom and to whom said money was to be paid?

This question is objected to because the deed itself shows that. The contents of a written instrument cannot be shown by parol, unless the instrument is lost.

Ans. I cannot remember the contents of the written deed. The consideration was that he was to pay Dave \$250.00 and Jas. \$250.00, and the girls \$150.00 each, said three hundred dollars was to be paid the girls at the old man's death, or in five years.

Ques. 8. Is that the consideration named in the deed?

This question is objectionable for the same reasons stated above.

Ans. I think so, or at least that is what they told me.

Ques. 9. Did they not also tell you that John J. Newberry was to live in the house with his father and mother, use and cultivate said land, and to support and maintain them and pay to said D. B. Newberry and wife sixty bushels of corn and fifteen bushels of wheat per year?

Ans. No, if they told me any thing of that kind, except that John was to live in the house, I have no recollection of it.

Ques. 10. Did they not also tell you that John J. Newberry was to pay in addition to what he paid Dave and Jas. and the girls the sum of five hundred dollars.

Ans. No, sir, they did not. I never heard of such a thing until since John's death.

And further this witness saith not.

HC P. Horton

H.N.Horton, Jr., another witness of lawful age, being duly sworn deposes and says.

Ques. 1. Are you acquainted with D.B. Newberry, if so, how long have you known him?

Ans. I am acquainted with said Newberry. I have known him for twelve or thirteen years..

Ques. 2. If you ever had any conversation with D.B. Newberry about the conveyance of the tract of land described in the exhibit~~ed~~ filed with the bill in this case marked, "A", please state what Mr. Newberry said?

Ans. I had a conversation. Mr. Newberry told me that John had bought the boys out and was to pay the boys five hundred dollar s, or \$250 each, and the girls \$150 each, making \$300.00 to the girls. He said that John ~~was~~ the only one that was able ~~to~~ to buy them out and that John was the only one that he could live agreeable with in the house. He further said that he was sorry that he had paid Dave his money when he did, that he was ~~running~~ running through with it as fast, it looked, as he could.

Ques. 4. Did this conversation occur before or after said deed was made, and if after, how long after?

Ans. Mr. Newberry ^Ktalked with me about this more than once. I think that we had one conversation before and perhaps one or two after.

Ques. 5. In any of these conversations did Mr. Newberry claim that John J. Newberry was to pay him any thing?

Ans. No, he did not.

Ques. 6. Please state whether or not you saw and ^Ktalked with D~~B~~ B. Newberry several times between the date of said deed in 1887, and John Newberry's death.

Ans. Yes, I saw him several times, lived about a mile from him and was frequently at his house, and often talked with him.

Ques. 7. If you ever heard D.B. Newberry ~~sate~~ say any thing about dividing the land between the boys, how John came to buy out the interest of Dave and Jas., and how he came to convey to John,

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please state what he said about it?

Ans. I heard him say, as I stated, that none of the boys but John was able to buy out the other boys, and that he thought that he could live agreeably with John. I heard him speak of laying Mel's part off in land, and that John had bough Dave and Jas.'s interest and was to give \$250.00 each.

Cross-examination.

Ques. 1. When and where, and in whose presence did the conversation related above by you take place?

Ans. The first conversation we had John was present and was in the Big Road near the old shop. This was in the year 1887, in July or August. The next one took place was in 1888 in Jan. of that year, I think, or perhaps a little later. I know that it was soon after the deed was written. I think that John Newberry and his wife and old Mrs. Newberry were all present. I think we had other conversations ~~at~~ at the house, but I do not remember when, or who, if any one, was present.

Ques. 2. Please state which occurred first, the conversation related in which you tell who was present and where they were, or the the ones which you cannot tell where they were or who was present?

Ans. Those occurred first in which I remember who were present.

Ques. 3. Please state how it is that you can remember where the first conversations occurred and who were present, and cannot remember about the last?

Ans. I remember the first one because it occurred at the old shop.

Ques. 4. To whom did you first tell these conversation^s and ~~when~~^{and} when?

Ans. I do not remember to whom I first told these conversations.

Ques. 5. When did you first tell it to the defendant in this case.

Ans. I do ^{not} know.

Ques.6.How came you to tell about it?

Ans. I thought it to be my duty.

Ques.7.Did you ever hear D.B.Newberry say whether or not John J.Newberry was to pay him \$500.00 in addition to what he had to pay to Dave and Jas. and the girls for the land he purchased of them?

Ans. No,I never did. I never heard it mentioned until after John's death.

Ques.8.Do you know whether or not he was to pay him \$500.00?

Ans. No,I do not.

And.further this deponent saith not.

J. H. Horta Jr

Geo.W.Hickam,a/nother witness of lawful age,being duly sworn, says:

Ques.1.Please state how near you have lived to D.B.Newberry from 1887 to the present time?

Ans. I have live about 150 yards to Mr.Newbeerry since that time.

Ques.2.After said deed,and up to the time John J.Newberry died,please state if you ever heard D.B.Newberry claim that J.J.Newberry was indebted to him for purchase price of the land in the bill mentioned.

Ans.I never did until after the death of John.

Ques.3.Please state if you and the said D.B.Newberry were friendly and had frequent conversation during that time?

Ans.We were friendly.We had frequent conversations.

Ques.4.Are you acquainted with the land conveyed by D.B.Newberry to J.J.Newberry?

Ans.I am.

Ques.5.Please state what would have been the fair cash value of that part of the old tract,i.e,the home place,at the time of said conveyance? Conveyed by said D.B.Newberry to J.J.Newberry?

Ans.I think thirteen of fourteen hundred dollars.

Ques.6.What would have been the fair cash value at that time

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of one half of the other land conveyed by the said D.B. Newberry to the said J.J. Newberry?

Ans. I think \$200 or \$250.00 was all that it was worth.

Ques. 7. Please state what you would have considered the fair cash value of the land conveyed by D.B. Newberry to J.J. Newberry provided that the possession and occupancy of said land was to remain in D.B. Newberry and his wife during their lives?

Ans. I consider that \$800.00 would have been a plenty for it. And more this witness does not say.

G. W. Hickam

H. T. Fergusson, another witness of lawful age being sworn, says,

Ques. 1. Are you the defendant in this case?

I am one of them, I am the admr. of the estate of J.J. Newberry, deceased.

The plaintiff by his attorney objects to this witness giving his evidence because he is the personal representative of the said J.J. Newberry, deceased &c., and therefore not a competent witness in the case.

Ques. 2. After the death of J.J. Newberry, and after your qualification as administrator, did D.B. Newberry present any claims to you against the estate of J.J. Newberry, deceased, if so how many?

Ans. He did, there were three.

The above question and answer is objected to because the claims are admitted to be in writing and are the best evidence.

Ques. 3. Were these claims all presented at the same time?

Ans. They were not.

Ques. 4. Please state what occurred when Mr. Newberry presented the last claim?

Ans. When he presented the last claim to me it was for \$28 or \$27 and a few cents, and J.J. Newberry's widow claimed a credit and I asked Mr. Newberry about this and he admitted it, but he went on and put the claim in an officer's hands. I met Newberry and the officer coming to my house as they claimed. I told Mr.

Newberry that there was no use putting out the account if he ~~at~~ allowed the credit I would pay it provided he would give me a ~~re~~ receipt against J.J.Newberry's estate. I asked for a clear receipt, this being the third account, because if there was any thing yet behind I want it brought up.

Ques. 5. Please state if he gave you a receipt and if that is the one filed as an exhibit with your answer?

Ans. Yes, sir, that is the one.

Ques. 6. At that time did he assert any claim against the estate of J.J.Newberry for a sum alleged to be due to him on the purchase price of the land conveyed by him to the said J.J., if so please state what he said and what you said about it, if any thing?

Ans. No, at that time he did not assert any other claim at all.

Ques. 7. In that conversation did you tell him that you had nothing to do with his claim on the land matter?

No, I did not, there was nothing said about any other claim.

Ques. 8. Did you make as administrator of J.J.Newberry, dec., any payment to Jas. K. P. Newberry of any sum claimed by him against the estate of the said J.J.Newberry? If so, what was the cause of said indebtedness if you know?

Ans. - I did make a payment. He held one note on which there was yet due fifty dollars, this being a \$200⁰⁰ note which stated that it was for land. He told me that it was for his interest in his father's land.

The last sentence in this answer is excepted to by the plaintiff because hearsay.

The witness further answers and says that on the \$200 there was \$20 interest which he paid, and he paid a fifty dollar note which said J.K.P.Newberry held.

Ques. 9. When, for the first time, if ever, did D.B.Newberry demand payment from you of \$500 alleged to be due to him from the estate of J.J.Newberry?

Ans. He never did demand any other amount than that I paid.

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Ques.10.If you ever had any conversation with D.B.Newberry in reference to the \$200 note held by J.K.P. against J.J.Newberry, and the fifty dollar note claimed by him against the same, please state what D.B.Newberry said about it?

Ans.I had a conversation concerning the two notes.He told me that the \$200 note was given for J.K.P.Newberry's interest in the land which he had directed John to pay to J.K.P.,and that fifty dollars was paid at the time ~~\$200 was given~~ note ~~it~~ was executed for the remainder. He said that of the fifty dollar note he knew nothing. He said that he had directed John to pay only the \$250 for J.K.P.'s part,that being all that he intended him to have.

Ques.11.When did this conversation occur?

Ans. It occurred some time in May or June,1892, as near as I can remember.

Question by the plaintiff.

Ques.1.Please state who was present when you made the last ~~State~~ statement of which you speak?

Ans. E.A.Robinett and Mr.Newberry and his wife.

Ques.2.Please state whether or not on that occasion and in the presence of E.A.Robinett D.B.Newberry did not refuse to give you a receipt in full of all ~~claims~~ claims against the estate of J.J.Newberry, and stated as his reason for so refusing that he had a debt against the estate of J.J.Newberry on a ^{land} matter of \$500.00? And did you not state to him that you wanted a receipt against all personal claims and to let the land matter alone now, that you had nothing to do with that?

Ans.He first said that he did not think he would give me a receipt in full. ^{After} studying a moment he said that he did not care to give me a receipt in full.He did not mention \$500 or any thing of any land matter on that occasion, unless he mentioned the one hundred and fifty dollars due ^{Eliza J. Glass} by ⁷ class, and I told him that a receipt would have nothing to do with that \$150, as it was provided in the deed that it should be paid to her and not to him.

Ques.3.Please state whether or not, if at the time you~~y~~ paid J. K.P.Newberry the money that you claim to have paid him if you did not ask him if he claimed or understood that the money that you were paying to him was a part of the five hundred dollars that D.B.Newberry claimed in the deed as due him from the estate of J.J.Newberry?

Ans.Yes,I asked him if that was not part of the money that John J.Newberry was to pay him,or a part of the five hundred dollars.'

Ques.4.Please state then why it is that you asked J.K.P. Newberry this question if you did not know that D.B.Newberry was claiming five hundred dollars?

Ans.The reason why ~~I~~ asked the question from what the deed stated,and from a rumor I had heard in the country.All that I knew was a rumor in the country.

Ques.5.Please state what you told J.W.Hall in regard to this receipt?

Ans. I told J.W.Hall that I had a receipt in full against any claim that D.B.Newberry had against the estate of J.J.Newberry,deceased.I think this is all that I told him.

Ques.6.Did you not tell him that when you took this last receipt that you had the five hundred dollars claimed by the old man Newberry in view,and did you not then and there ask him whether or not he thought that receipt would hold good as against the five hundred dollars?

Ans. No,I did not say any thing to him of the five hundred dollars.

Ques.7.Please state whether or not you did not say to H.J. Morgan in the presence of William V.Glass that you took a receipt from D.B.Newberry in full of all claims against the estate of John J.Newberry,and did you not ask Judge Morgan then and there if this receipt would not offset or beat the five hundred dollars claimed by D.B.Newberry?

Ans. I showed Judge Morgan the receipt I had,but I do not know that I asked Judge Morgan about the five hundred dollars. I asked him some thing about the \$150 that was going to Glass'

wife.

Ques. 8. Did you not then and there ask Judge Morgan if the receipt that you had taken from the old man Newberry did not cover every thing including the five hundred dollars that Newberry was claiming in the deed? And did you not have the deed ~~there~~ there with you and show it to Judge Morgan at the time?

Ans. I think that I asked Judge Morgan if the receipt did not cover every thing. He saw the deed, I had the deed. I do not think that ^I asked any thing about the five hundred dollars.

Ques. 9. As a matter of fact did you not have this five hundred dollars in view at the time you took the receipt? And is not that the reason why that you stated in said receipt that it was in full of all ~~the~~ claims against the ^{estate} of J. J. Newberry?

Ans. I had every thing in view that might come out here after. I meant to have all the claims in then or not take a receipt. I meant not to pay the claim that he had then present unless every thing yet behind came up together, and I so told him.

Ques. 10. Please state what relation, if any, you bear to Mary J. Fergusson, one of the defendants in this case?

Ans. She is my wife.

Re-examination.

Ques. 1. Did not D. B. Newberry set up a claim to the \$150 seapart for Eliza J. Glass?

Ans. He did. He also claimed the \$150 set apart for Marva ~~the~~ Glass, and notified me not to pay to either of them.

Ques. 2. What object did you and Eliza J. Glass' husband have in coming to consult a lawyer.

Ans. I had the money and I wanted to pay it off. I was not willing to do so until I had been told by a lawyer that I would be safe in so doing. This was our object and all that we had in view.

And more this witness does not say.

A. J. Fergusson

William S. Hickam, another witness of lawful age being duly sworn says:

Ques. 1. How close do you live to the tract of land conveyed by D.B. Newberry and wife to J.J. Newberry?

Ans. Nearly one mile.

Ques. 2. Please state if you are acquainted with said tracts of land, and how long you have known it?

Ans. I have known this tract of land all my life, and I am 36 years old.

Ques. 3. What do you estimate would have been the fair cash value on the 10th day of Oct. 187, of that part of the old home place conveyed by the said Daniel to John?

Ans. From fourteen to fifteen hundred dollars.

Ques. 4. What would you regard on the same day as the fair cash value of one half of that part of the Worley tract conveyed by the said D.B. to the said J.J.?

Ans. I think that five or six dollars per acre is as much as that land is worth.

Ques. 5. What would you have regarded as the fair cash value of the land conveyed by D.B. Newberry to J.J. encumbered as it is by Daniel Newberry and his wife reserving possession and control of said land during their lives?

Ans. I think \$800.00 would be a very fair price.

And further this witness saith not.

W. S. Hickam

No other witness appearing further proceeding in this case is adjourned until tomorrow at same place, 9 a.m. This May 14, 1874 -

E. W. R. Ewing,
Special Commr.

Done in court

H. T. Ferguson Adm
adv. $\frac{2}{3}$ Depositions

D. B. Newberry —

Witness Attendance

H. N. Horton, Sr.	.50
H. N. Horton, Jr.	.50
G. W. Hickam	.50
	<u>\$1.50</u>

The depositions of E.A. Robinett, and others, taken before me, E.W.R. Ewing, a Special Commissioner, acting pursuant to decree entered in the case in which these depositions are to be read, by the Circuit Court of Lee county at its March term, 1894, and pursuant to notice given the parties as required by said decree, (a copy of which is here attached marked "E.W.R.E."), at my office in Jonesville, Va., on the 30th day of April, 1894, to be read as evidence in determining the question submitted to me by the said decree in the case of D.B. Newberry, plaintiff, vs. H.T. Fergusson, admr., et al., defendants, now pending on the Chancery side of the said Circuit Court of Lee county, Virginia.

Present L.T. Hyatt, for defendants.

M.G. Ely and G.W. Blankenship, for plaintiff.

E.A. Robinett, a witness of lawful age, being duly sworn, deposes and says: -

Question by the plaintiff.

Ques. 1. Please state whether or not you were present at a settlement made between D.B. Newberry, complainant, and H.T. Fergusson, administrator of the estate of J.J. Newberry, deceased, and one of the defendants in this case, on Sept the 6th, 1892, and if so, what was that settlement, and what was said between the parties?

Ans. I was there. I assisted in a settlement between these parties. Mr. Fergusson said that he wanted all the claims against the estate of J.J. Newberry, deceased, brought in. Mr. D.B. Newberry said he had, besides the claim of \$27.16 on which a warrant had been issued, a claim or debt against the estate of John J. Newberry of \$800.00 on a land matter; to this Fergusson said he had nothing to do with the land matter, and refused to settle this last amount. Mr. Fergusson demanded a receipt, and Mr. Newberry said he would not give a receipt against all claims. When Mr. Newberry said this, Mr. Fergusson said to receipt against these personal claims, and let the other alone now.

Ques. 2. Was a receipt then given by Mr. Newberry, if so, for what amount, and for what items or charges?

Ans. Mr. Newberry gave a receipt against several items all of which
which amounted to \$21.09 upon which they settled.

Ex. The last part of question 2, i.e. the part of the question
following "so" is excepted to because the receipt is the best
evidence. *By defence.*

And further this witness saith not.

E. A. Robnett

No other witness appearing, further proceeding in this case
is continued and adjourned until May 5th, 1894, at the same place
Given under my hand, this April 30th, 1894.

E. W. R. Ewing,

Special Commissioner

Office of E.W.R. Ewing, Special Com.

May 5, 1894.

Present G.W. Blankenship and M.G. Fly for Plaintiff,
Duncan and Hyatt for the Defendants.

David J. Newberry a witness of lawful age, being duly sworn, deposes and says,

Ques. 1. State your age occupation and residence.

Ans. I am 31, I am a farmer and live at Chandler, Lee co., Va.

Ques. 2. Please state what relation you are to the plaintiff and to J.J. Newberry deceased?

Ans. I am son of plaintiff, and brother to J.J. Newberry, deceased.

Ques. 3. Please state whether or not J.J. Newberry, deceased, in his lifetime was indebted to D.B. Newberry in the sum of \$500.00, or any other sum, if so tell all about it?

Ans. In the first place my understanding is that he is indebted to father \$500.00. This all that I know, except what has been paid.

Ques. 4. Please state whether or not you ever heard John J. Newberry say, or admit, that he owed your father, D.B. Newberry, the sum of which you speak?

Ans. Yes, I heard him say it.

Ques. 5. Please state when and where?

Ans. I cannot state exactly when, it was about three years before his death that he talked to me the first time, and the last time it was about the best I recollect, two months before his death, perhaps as much as three. The first time we were under the old shop shed on father's premises, under the barn shed on the same farm. *the second time* This was the last time that I saw him alive.

Ques. 6. Please state what he said that this indebtedness was for?

Ans. It was for money due on land.

Ques. 7. State as near as you can when John J. Newberry died?

Ans. He died three year last March.

Cross examined.

Ques. 1. You say in answer to the question number 5. propounded to

you above that you heard John J. Newberry admit that he owed you father, now please state exactly what John J. Newberry said, giving his words as nearly as you can?

Ans. He said to me, this the first time, that he did not believe that father would make a deed to him, and I asked him why, he ~~says~~ says, father is wanting \$600.00, and he said I will not pay him ~~a~~ but \$500.00, and said if he will make me a deed I will give him the \$500.00 and will not give him any more. The last time he and I were under the barn shed, I lived then in Tennessee and was fixing to start home that morning, and he named about fifty dollars in money he had promised me, and he said I will pay you and James fifty dollars more for I do not believe that the old folks will be with me long. He said I believe that pap will make me a will to that five hundred dollars that I owe him.

Ques. 2. The first conversation you had with you brother J. J. Newberry was before the deed was made by your father to him, was it not?

Ans. Yes.

Ques. 3. About how long before?

Ans. The best I can recollect, from two to four months.

Ques. 4. What season of the year was it that the first conversation occurred?

Ans. If I am not mistaken, it was in August.

Ques. 5. Where did you then live?

Ans. I lived there on the place, across the creek from father's.

Ques. 6. Did not your father, some time before the first deed was made to J. J. Newberry, divide or ^{as} petition his lands among his four sons, if so what was the terms upon which he agreed to make said ^{as} petition?

Ans. If father ever divided his lands, it was before I was born. We boys laid off some land ourselves, but father had no hand in it.

Ques. 7. What land was it you boys laid off?

Ans. Lands father owned.

Ques. 8. What lands were these?

Ans. The lands where he now lives and where he lived then.

Ques. 9. Why did you boys divide up these lands?

Ans. Father told us that he intended to give it to us some day, and there was no work going on on the place and it was going down, and each one claimed that he did not want to do it all to keep the place up, he told us to go and lay off the lots to suit ourselves, and that probably he would make us a deed to it some day, and then each fellow would know where to work. We went ahead and laid off two lots and the other remains unlaid off yet.

Ques. 10. To which of you two boys were these lots laid off.

Ans. John and Mell.

Ques. 11. Why were not lots laid off to you and Jim?

Ans. He told us not to lay them off.

Ques. 12. When did he tell you not to do this?

Ans. He told us not to do this some two or three weeks after.

Ques. 13. What reason did he give for telling you not to lay off any lots to you and Jim?

Ans. He said that all of us could not live on the place.

Ques. 14. Who now owns the lot laid off to your brother Melvin?

Ans. Melvin himself.

Ques. 15. In this division that your father directed you boys to make among yourselves what provision, if any, was to be made for your sisters?

Ans. If he made a deed to us boys each one of us boys was to pay the girls one hundred dollars apiece.

Ques. 16. Did you sell your interest in the said land to any person, if so to whom?

Ans. I have not said that I had any interest yet.

Ques. 17. You speak in answer to one of the questions on your examination in chief, of J.J. Newberry owing you fifty dollars what was that for?

Ans. I never said that he owed it. I said that he had promised it to me.

Ques. 18. What had he promised it to you for?

Ans. Because father had not given me any thing and he thought that I ought to have it.

Ques. 19. How much did he give you in this way?

Ans. He gave me two hundred and fifty dollars and promised me fifty more. I never got the last.

Ques. 20. Now, was not this \$250.00 paid or given to you in consideration of your interest, or supposed interest, in your father's land which was conveyed by him to J. J. Newberry?

Ans. It was given to me as a part of my proportion, I suppose, if ^{not} I do not know for what.

Ques. 21. Was there any contract between you and J. J. Newberry at about this matter, and what he was to pay you?

Ans. Yes, there was a kind of a contract.

Ques. 22. What was that contract?

Ans. The contract was that he was to pay me \$250.00, and probably more, according to circumstances, if he got in good circumstances and the old folks did not stay on him too long.

Ques. 23. When was this contract made?

Ans. I believe that it was in 1887, or perhaps in 1888.

Ques. 24. Was it before or after you boys started to make the division you spoke of before?

Ans. It was after.

Ques. 25. Was it after or before the deed made by your father to J. J. Newberry?

Ans. It was before.

Ques. 26. Did he pay you said \$250.00 in his life time?

Ans. Yes.

Ques. 27. Give as nearly as you can the dates of the payments made by him to you?

Ans. In a few days after the agreement he paid me, to the best of my recollection, \$105.00, about one or two months after this he paid me the remainder.

Re-examined.

Ques. 1. About how much land did you father own when he made the deed to John J. Newberry: and what was it reasonably worth?

Ans. In all there some two hundred and fifty acres, more or less, of this amount there was about two hundred acres more or less conveyed to John. The remainder he conveyed to Mel. This land was

reasonably worth, that conveyed to John, \$4000.00.

Ques. 2. Was the \$250.00 paid to you by John J. Newberry part of the consideration named in the deed from D.B. Newberry to him?

Ans. No. *John*

Ques. 3. Was John J. Newberry had paid you the \$250.00 spoken of did he tell you that he owed his father five hundred dollars, and was that the five hundred dollars, he spoke of as expecting that his father would will to him?

Ans. Yes, it was after that that he told me that he owed father \$500, this was the five hundred dollars that he said he was expecting father to will to him, as I understood it.

Ques. 4. Was the \$250 that he paid to you any part of the five hundred dollars that he said that he owed your father?

Ans. It was not.

Ques. 5. Was this \$250 paid to you by J.J. Newberry at the instance and request of D.B. Newberry?

Ans. If it was I know nothing of it.

Ques. 6. Did your father give you an order to John Newberry or was there any agreement with you father for John to pay you this money?

Ans. He gave no order, and if he knew it I am not aware of it.

And further this deponent saith not.

J. J. Newberry

J.K.P.Newberry, another witness of lawful age, being first duly sworn, deposes as follows:

1st. Ques., for plaintiff.--

Please state what relation you are to John J.Newberry, and also to D.B.Newberry?

Ans.D.B.Newberry is my father and John J.Newberry is a brother

Ques.2.Please state whether or not John J.Newberry in his lifetime, or H.T.Fergusson, his administrator since his death, has paid to you any part of the five hundred dollars which John J. Newberry owed to your father D.B.Newberry for purchase price on land named in the deed of conveyance from D.B.Newberry and wife to John J.Newberry, date the 10th day of October, 1887?

Ans. He did not, nor has Mr.Fergusson done so.

Ques.3.About how much land did your father convey to John J. Newberry by deed bearing date October, 10, 1887?

Ans. Some thing near two hundred acres.

Ques.4.What was the reasonable fair cash value of the said land at the date of the said deed?

Ans. I suppose that it was worth four thousand dollars.

Cross examined by defendant.

Ques.1.Please state how much if any thing H.T.Fergusson as administrator of the estate of J.J.Newberry, deceased, has paid you since the death of the said J.J.Newberry?

Ans.I am pretty confident that Mr.Fergusson at one time paid me \$70.00, at another time he paid me fifty dollars.

Ques.5.What were these two sums due to you for from the said J.J.Newberry?

Ans.I understood that it came out of a part of my father's estate that was coming to me.

Ques.6.Was it not for your interest in your father's land, the land mentioned in the deed from D.B.to J.J.Newberry?

Ans.Yes.

Ques.7.Do you remember the date of the two hundred dollar note just spoken of by you, if so state it?

Ans. My impression is that the date was the 10th day of Oct. 1887.

Ques. 8. What was J.J. Newberry to give you for your interest in your father's land?

Ans. \$250.00, with the promise of \$50.00 when he got in better circumstances.

Ques. 9. Was not a part of the land described in the deed of October 10th, 1887, and filed as exhibit "A" with the plaintiff's bill, already the land of J.J. Newberry before the date of the said deed?

Ans. Yes, I so understood it.

Ques. 10. Now state what part belonged to John?

Ans. I cannot tell any thing definite, I was living in Tenn. at the time.

Ques. 11. How much did your father's home tract contain?

Ans. One hundred acres, more or less.

Ques. 12. Did your brother Melvin get all of his land out of the old home tract?

Ans. No, he got ten acres out of the home tract, and the remainder out of the ridge tract.

Re-examined by the plaintiff.

Ques. 13. Was this money that was paid to you by J.J. Newberry and H.T. Fergusson any part of the \$800.00 consideration mentioned in the deed from D.B. Newberry to J.J. Newberry, filed in the papers?

Ans. I cannot say, I did not so understand it, I did not know.

Ques. 14. Was the money paid you by J.J. Newberry and H.T. Fergusson, any part of the \$500.00 which your father claims is yet due him out of the purchase price of the said land?

No, I did not so understand it.

Ques. 15. Please state what Mr. H.T. Fergusson ^{said} about the five hundred ~~dollars~~ yet claimed to be due when he paid you the money?

Ans. Mr. Fergusson asked if I claimed or understood that this was coming out of my father's estate, and I told him I did, and he asked if I understood that it was a part of the five

hundred dollars that father claimed in the deed and I told him I did not know what was claimed in the deed, as I had never read it, I did not so understand it.

Question by the defendant:

Ques. 1. Did you make any deed of your interest to John?

Ans. No, I did not. John never asked me to make a deed. The title to said land was in father and not in me.

And further this deponent saith not.

J. R. P. Newberry

*Witness
claims for
one day.*

J.W. Hall, another witness of lawful age, being duly sworn, depose and says,

Question by the plaintiff.

Ques. 1. Please state whether or not at the house of Mrs. Venabé on Wallens Creek, in this county, a year or so ago, you heard H.T. Fergusson, in a conversation which you had with him, say any thing about a receipt which he had taken from D.B. Newberry, as admr. of the estate of J.J. Newberry, if so tell all about it?

Ans. At the place and about the time mentioned I had a conversation with Mr. Fergusson, he told me in this conversation that he had paid old man Newberry a small amount of money and had taken his receipt in full against the J.J. Newberry estate, he said that he wanted a receipt in full from him, and that in so doing he had an eye, or words to that effect, to five hundred dollars which Mr. Newberry claimed from the estate. He asked me if I did not think that this receipt would not offset ^{or least} the five hundred dollars.

And further this witness saith not.

Jas. W. Hall

William V. Glass, another witness of lawful age, being duly sworn, deposes and says: -

Question by the plaintiff.

Ques. 1. Please state whether or not you had a conversation with H. T. Fergusson, or hear a conversation between H. T. Fergusson and H. J. Morgan in regard to a receipt which he, Fergusson, had obtained from D. B. Newberry for some money against the J. J. Newberry estate, if so tell all about it?

Ans. Mr. Fergusson and I set a day that we would meet here at town and he was to pay one hundred and fifty dollars that was set apart in that deed from D. B. Newberry to J. J. Newberry, we came to see a lawyer to get some counsel, there was no one present on that day except Judge Morgan. We went in his office down there he had the deed with him and he showed that to Judge Morgan, after he had showed him the deed he told him what he thought was best, and then he also showed him a receipt that he claimed that he had got from the old man Newberry, Judge Morgan took it and read it, Mr. Fergusson asked him how he thought that that would do, he said that it looked like it would cover everything; Mr. Fergusson said "I thought that it would cover everything that the old man (Newberry) was claiming in that deed", or five hundred dollars.

Cross examined by defendant.

Ques. 1. Are you well acquainted with D. B. Newberry?

Ans. Of course I am. I live about 1-4 mile from him and have known him perhaps twenty years.

Ques. 2. What has been his financial condition for the last seven or eight years?

This question is objected to because irrelevant, impertinent, immaterial and ^{not} connected with the issue.

Ely & Blankenship for Plff.

Ans. If he has had any money to amount to anything I do not know any thing about it. I do not know whether he has had or hasn't had.

Ques. 3. Of the land conveyed by D. B. Newberry to J. J. Newberry

*Witness
Closes
one leg.*

please state if a part of it was not already the land of the said J.J. Newberry, if so what part?

Ans. This land was composed of two tracts, one known as the Worley tract the other known as the home tract, the home tract contained about 97 acres or near that, and the Worley tract contained, or was bought to contain, one hundred acres, of the home tract John got all except eight or ten acres, and all of the Worley tract except thirty one acres that had been sold to myself and Wes Glass, and thirty five acres conveyed to Mel Newberry. The Worley tract was owned jointly by D.B. Newberry and J.J. Newberry.

Re-examined by the plaintiff.

Ques. 1. Please state what that home tract was worth?

Ans. It was worth fifteen hundred dollars. The Worley tract was worth about seven hundred dollars.

And further this witness saith not.

Wm. V. Glass

I, E.W.R. Ewing, Special Commissioner, duly appointed in the case of D.B. Newberry vs. H.T. Fergusson, admr., et al., by the Circuit Court of Lee county, at its March term, 1894, do hereby certify that the foregoing depositions of E.A. Robinett, David J. Newberry, J.K.P. Newberry and William V. Glass and J.W. Hall, were duly taken, subscribed and sworn to before me, at the time and place and for the purpose in the caption mentioned.

Given under my hand this May 5, 1894.

E. W. R. Ewing
Special Commissioner.

D. B. Newberry

vs. } Deposition Plff.

H. F. Ferguson, et al.

E. A. Robinett .50
J. D. Newberry .50
J. K. P. Newberry .50
W. V. Gloss .50
J. W. Hall .50

\$2.50
1.50
4.00

After the evidence of E.A. Robinett, J.K.P. Newberry, J.B. Newberry, W.V. Glass and J.W. Hall was heard the Plaintiff announced that he closed. But after the defendant had introduced H.N. Horton, Sr., and H.N. Horton, Jr G.W. Hickam, William Hickam, Frank Glass and J.B. West, the plaintiff asked that he be allowed to introduce further testimony, and accordingly the further taking of depositions is continued and adjourned to the dwelling house of D.B. Newberry on Walden's Creek, Lee county, Va., May 16, 1894.

E. M. R. Living,
Special Commissioner.

D. B. Newberry's dwelling,
May 16, 1894.

Pursuant to adjournment.

Present L. J. Hyatt for Deft.

" G. W. Blau Kensington for Pltffs.

Leah Newberry another witness of lawful age, being duly sworn, deposes and says:-

- 1 Please state whether or not you are acquainted with D. B. Newberry & if so how long have you known him? Also whether or not you knew John J. Newberry in his lifetime ~~and~~ & if so how long were you ^{ever} acquainted with him?

Ans. I am acquainted with D. B. Newberry, & have known him about 35 years. I knew J. J. Newberry, and knew him about twenty-five up to his death. I am the daughter-in-law of D. B. Newberry, & was a sister-in-law to J. J. Newberry.

- 2 Please state whether or you know of D. B. & J. J. Newberry purchasing a tract of land together?

Ans. Yes, I have heard each say they had bought equally a tract of land. It was known as the Morley tract,

3

Please state if you know any thing about their paying for this land, if each paid their proportional part + all you may know about it how + from whom you obtained your information? + ~~from whom?~~

Ans.

The first ^{of which I knew} payment was made in the spring about ten years ago. We lived with the old man that winter. The old man ~~sold~~ sold some cattle & horses and paid on the land, or at least both said so. He word from the old man's, when John came over day to pay James some money. He had one hundred & fifty which he would to pay. Jas. was not at home, & he asked me if James would let him keep fifty of that amount, as he owed Judge Morgan at Jonesville fifty dollars, the last payment on the Worley land would to pay it. I asked if he had to pay all of the \$57.⁰⁰ note & his father pay no more. He said that when he paid the \$57.⁰⁰ he would yet be behind as he had been in goods business & had fallen through & the old man had had to pay it about all.

4 At that time did you hear J. J. Newberry say anything more about owing his father, if so, please state all he said if you remember?

Ans. John said he owed his father a good deal of money which he had borrowed of him. John also stated that his father was grumbling about having to pay the Morley land notes.

5 Please state if you was present at a settlement between D. B. Newberry & H. T. Fergusson, owner of J. J. Newberry, Sec'd, if so state all you know about said settlement & what was said between the parties?

Ans. I was present at the settlement when Mr. Fergusson paid D. B. Newberry about \$21⁰⁰ for which the twenty-one dollar receipt was given. Mr. Fergusson ask for a receipt against the estate of John & D. B. Newberry said he would not give a receipt except against the little personal claims, as there was a bond note of \$800, which John and he was going to collect & as it was due him

Fergusson said he had nothing to do with land matter, adding, "you and May for that."

- 6 Please state whether or not you ever heard John J. Newberry say whether or not he had paid his proportional part on the Worley land?

Ans.

I heard him say that he had not paid his part ^{in the Worley land}. He said the fifty seven dollars and horse was paid by him ~~himself~~. This was about ~~one~~ ^{one year} ~~or four years~~ before John died & some time after the deed was made from D. B. Newberry wife to said J. J. Newberry. I did not hear John say whether the fifty-seven dollars & horse was all or not.

~~X Examination~~

Ques. ~~X~~ Did you ever hear John say how much he had paid off the Worley land? or how much of his part the old man had paid?

- 7 Please state if you know of D. B. Newberry sending any money by J. J. Newberry to H. J. Morgan at Jonesville to pay on Worley land notes, if so, please state all you know about it?

Ans.

When the old man sold the horse and cattle, John saddled his horse and I asked where he was going.

He said he was going to town to pay the Worley notes with that money. I saw file two notes marked 20X which were notes secured for the Worley land. I heard John & his father both say the old man was sending the horse & cattle money to pay on the Worley land notes.

All the evidence of this witness relating to the Worley land and the payments thereon is objected to, because the plaintiffs have closed their case, and said evidence is not in rebuttal.

Duncan Volleyatt,
For Defts.

X. Examination.

Ques 1. In the settlement between Ferguson & D.B. Newberry of which you speak, are you certain that Mr. Ferguson said that the receipt would not have any thing to do with the land matter? In other words do you know that Mr. Ferguson knew anything of the \$800⁰⁰ here in dispute?

Ans. Yes, I am sure that Mr. Ferguson said the receipt would have nothing to do with the land. Mr. Ferguson knew of the \$800⁰⁰ here in dispute.

And more this witness does not depose.

Leah Newberry.
work.

Witness claims one day.

Leah Newberry, again being duly sworn, deposes and says:-

- 1 Please state if you ever heard J. J. Newberry say anything about the \$500⁰⁰ due D.B. Newberry named in the deed of D.B. Newberry wife to J. J. Newberry, if so state what it was?

Ans. I never got to say his mother had got mad at him, she was afraid his father would get mad too, and he was sure if his pop got mad, he would make him pay the \$500⁰⁰ mentioned in the deed.

- 2 ~~Has~~ Has J. J. Newberry at this time paid his brothers Dave & Jim ^{anything} if so how much?

Ans. He had paid James \$50⁰⁰ at that time, & had paid ^{Dave} in full to the best of my knowledge, or at least I so understood.

X Examination

- 1 Who told you that John had paid Dave in full?

Ans. I cannot tell. I saw so. of it paid, as much as \$50, Dave bought a cow & I saw. paid for it, & Dave got a horse & I saw. paid for it.

2 How much of the money did you see paid to Dave?

Ans. I never saw any money paid, but I saw Don have \$50.00 & he said Don had paid it to him.

3 Did you see John sell Dave the mare of which you speak?

Ans. No, Gus. told me he was going to let Don ^{Twit} have her & I saw him

4 Did you hear the trade in which John sold Dave the cow, or do you know of your own knowledge that John paid for the cow which Dave bought from Stage?

Ans. Gus. said he paid for her. I did not see the trade.

5 Did you see John pay Jim the \$58.00, of which you speak?

Ans. No, I did not see it paid, but have heard both say it was paid.

6 How do you know anything about this whole matter outside of what you have heard others say?

Ans. Part I was present & heard said, & the remainder I have heard said. I have heard these trades talked over repeatedly.

7 When and where and in whose presence did you hear John say that he had paid Jim the \$58.00 of which you speak?

Ans. I heard John say this before the deed was made, it was at my home, & no one present but my family.

8 Who was present when you heard John say that he was going to let Dave have the mare? When and where was it?

Ans. I do not remember. I have heard him say so often, but cannot tell the place. It was in the year the deed was made but before it was made.

9 When was the deed made?

Ans. I cannot tell, the deed was made six years ago last October.

10 Where did you live when the deed was made?

Ans. Not far from V.B. Newberry's on his farm.

Rest

1 State what amount if any you heard J. J. Newberry agree to pay his brothers Dave & Jim for their interest in the land?

Ans. Three hundred dollars each.

X Examination.

2 When and where and in whose presence was this agreement made?

Ans. In my presence James Newberry in my house.

3 Was Dave present?

Ans. No.

3. Then do you know that John agreed with Dave to pay the said Dave \$300.00,

Ans. I heard John say so -

And further this witness does not say.

^{Wm}
Leah Newberry.
^{mark}

S. M. Newberry, another witness of lawful age being first duly sworn deposes as follows:-

Ques. 1. For plaintiff:

Please state if you ever heard J. J. Newberry say that he owed D. B. Newberry any amount on the land sold to him by D. B. Newberry & wife, in addition to what he was to pay David & J. B. P. Newberry, if so, how much?

Ans. I have heard John say he was to pay forty, i. e. his forty, D. B. Newberry, five hundred dollars outside of what he was to pay Don & James with two girls. I heard this after the deed was made. I have heard him say so often.

X Examination.

Ques. 1. Were you present when the deed was made to John by D. B. Newberry?

Ans. I was present.

Ques. 2. How much was John to pay for the land, and whom was he to pay it to?

Ans. He was to pay \$3000. He was to pay Dorris & James \$2500 each, and one hundred & fifty each to the two girls & five hundred to the old man, father.

Ques. 3 Had Jim. & Dave been paid the \$2500 each before the deed was made?

Ans. ~~No, they had not been paid.~~
James was paid after the deed was made, but I do not know as to Dorris, I heard Geo. say he had paid Dorris.

Ques. 4 Who told you that the old John was to pay your father \$5000 outside of what he was to pay Jim & Dave and the girls?

Ans. John told me so himself.

And now this witness does not say.

^{his}
A. M. Newberry
^{mark}

Mariane Newberry another witness of lawful age bring duly sworn deposes and says:

The evidence of this witness is objected to because she is one of the contracting parties, i.e. she is a party to the deed, and John J. Newberry, the other party

to said deed is dead, and she is therefore incompetent.

1 State what relation you are to D.B. Newberry & J.J. Newberry?

Ans. D.B. Newberry is my husband & Geo. was my son.

2 Did you ever hear D.B. Newberry tell H. N. Horton that the \$500⁰⁰ named in the deed of your husband & yourself ^{to J.J. Newberry} was to be paid to Don & Jim. In fact did your husband ever tell H. N. Horton that in your presence?

Ans. H. N. Horton never was told by my husband anything of the kind in my presence. Nor I never heard him tell any one else that.

3 Do you know whether or not your husband, D.B. Newberry, ever sent any money by your son, J.J. Newberry, to Jonesville or any where else to pay on the Worley land notes, if so, tell all you know about it?

This is objected to because plaintiff has closed his case and this is not in rebuttal.

Ans. I know that my husband furnished and sent John with money several times to town to pay

on the Worley notes. The notes were
sold by Worley to Judge Morgan at
Jenningsville, Ga.

~~More~~

H. Do you know whether or not J. J.
Newberry paid his part of the
of the money ^{due} on the Worley land notes -
ie. Did he, John, pay the amount
that he was to pay?

Ans. No, John did not pay his part.
More this witness does not say.
Marian ^{very} Newberry
mark

D. B. Newberry another witness of
lawful age, being duly sworn, says:

Obj. This witness is incompetent. He is a party
to the deed and John J. Newberry the other party
is dead. He is also the plff. in the case &c.
& is incompetent. His evidence is therefore
objected to.

Duncan & Co. for depts

Inter. 1. At the time you & H. F. Ferguson
made a settlement she took the \$21.09
receipt from you did you or not
then & there tell him that there
was yet due you on the land
trade from J. J. Newberry's note
any amount in, so what?
Tell all about it.

Ans. Mr. Ferguson said he wanted a receipt.

1.
Ans. (O. B. N. Cont.)

against these little items as he said he was getting tired of them. I said to him that there was a matter of \$800 on the land yet behind & due & had to be paid. Up to this time no part of the \$800 had been paid. To this he said me & the Hertons for that, that it was out of his line of business.

2. To whom was this \$800 due?

This question is objected to because deed is best evidence, and witness is incompetent for reasons heretofore stated.

Ans.

L. T. Hyatt for Defes.

One hundred & fifty to Eliza J. Glass, one hundred & fifty to Mary A. Glass & the five hundred dollars was due to me.

3. Up to this time had you demanded payment of the \$800.00 due you, if not, why not?

Ans. No, the reason was that I waited until after the expiration of the five ^{years} mentioned for the payment of the \$800, & I did not need it as bad then as I did after.

4. Did you ever at any time or place in a conversation with H. T.

2.
Ferguson tell him that the \$200
note held by J. K. P. Newberry against
J. J. Newberry was a part of the \$500
consideration named in the
deed, & that you had directed
J. J. Newberry to pay it J. K. P.
Newberry?

Ans. No, I positively did not. I
never directed him to James or Warr
any thing.

X. Examination.

1. How many claims did you present to St.
J. Ferguson, Admr., for payment?

Ans. Two.

2. Why did you not present both claims at the
same time?

Ans. Because they were different
items, one of the accounts was for
borrowed corn & wheat money. John
& I had sold some timber to Wm
Gloss. After John's death Wm paid
the whole amount to John's admr.,
I then had to make out an ac-
count & prove it in order to get my
part.

3. Had Gloss bought and taken off the lumber
before you presented the first account.

Ans. I do not remember.

4. You say you never directed H. I. Fergusson to pay James Newberry anything. Please state, if you know, what said \$200⁰⁰ note was executed for, i.e. the note fin. held against J. F. Newberry's est.?

Ans. I do not know any thing about it.

And more this witness does not say.

L B Newberry

No other witnesses appearing this case is adjourned to the office myself at Jonesville, Va. on May 22, 1894.

E. W. R. Ewing

Sp. Comm.

I, E. W. R. Ewing, Sp. Comm., hereby certify that the foregoing deposition was taken by me as special Comm., at the place & times for the purposes mentioned in the caption. This May 22, 1894,

E. W. R. Ewing,
Special Comm.

D. B. Newberry
v. { Dep. for Pl.

H. T. Fergusson, et al

~~~~~

Witness fees:-

Leah Newberry \$ .50

Mrs Newberry .50

Mel. Newberry .50

\$ 1.50



To the Honorable W.T. Miller, Judge of the Lee county Circuit Court:

Your commissioner in the case of D.E. Newberry vs. H.T. Fergusson, admr., et al., begs to report that pursuant to a decree rendered in this cause on the 15th day of March, 1894, by this Honorable court, he advertised and notified the parties in this cause of the time place and object of his sitting, (a copy of which notice is herewith filed marked E.W.R.E.) In response no one appeared who claimed to be a creditor of the estate of J.J. Newberry, dec., except the plaintiff in this case. Nor could your commissioner, outside of the questions involved in this cause, discover any charges against the estate of the said John J. Newberry which have not been fully paid by H.T. Fergusson, his administrator, unless as hereafter appears, as may be fully seen by an inspection of his settlement with J.A.G. Hyatt, the commissioner of accounts, and the proper officer before whom the said Fergusson should have settled.

After a laborious investigation of the questions involved in this cause, your commissioner reached the following conclusions:-

The plaintiff, D.E. Newberry, and J.J. Newberry were father and son. John J. died about three years ago. H.T. Fergusson, one of the defendants, administered on the estate of the said John, and also married his widow, who is the other defendant in the cause. In the life-time of the said John, he and his father purchased and became co-debtors for, and were to own equally, a tract of land known in the depositions in this case as the Worley tract. John became involved and your commissioner is fully satisfied that the father paid of these notes executed for the purchase price of this land more than his one half. And when the witnesses speak of John saying he owed his father money due on land, as he often did according to the depositions herewith filed, your commissioner is fully impressed that he had reference to the payments made by his father on these joint notes in excess of



the one half which the father should have paid. Of the excess over his one half paid by the father, your commissioner could not learn how much had been paid, with any degree of certainty. Your commissioner thinks that it is clear that Worley, the vonder, sold his notes to H. J. Morgan of Jonesville, and that after these notes were due new notes were executed to H. J. Morgan and in lieu of the original notes, and from the date on the back of the \$103.33 note filed with the bill marked "A 1", in red ink, the last of these payment seems to have been some time in June, 1885. If not debarred by the statute of limitations your commissioner is fully persuaded that this old man has a claim against the estate of his son John for some amount that should be paid. We ask your Honor to say from this state of the facts as to whether or not the statute of limitations applies, if not, your commissioner recommends that a decree should go down against H. T. Fergusson, admr., &c., for at least \$100<sup>00</sup>

Of the \$500.00, part of the purchase price of the land conveyed by D. B. Newberry and wife to the said John October 10th, 1887, your commissioner is strongly of the opinion that before the execution of this deed an agreement was entered into between the father, D. B. Newberry, and his sons, D. J., J. K. P., and S. M. Newberry whereby of all the land owned by the father, S. M. was to have a certain part laid off to him which he was to accept as his share, which was done, and he now has possession of the same, and others, D. J. and J. K. P., were to sell to the other, John J., and he was to pay them \$250.00 each. There were two girls and to each of these John J. was also to pay, as stated in the deed, \$150.00, then the father, the plaintiff in this case, was to execute a deed to John for the entire place except that laid off to *Mad*. To all of which all parties agreed, and the deed was made. This makes the \$800.00 consideration in the deed. The father was to have possession and control of the land until his death. As will be seen from the evidence of Geo. W. and William Hickam, disinterested witnesses, this was as much as the land at that time and under these circumstances was worth.



As will be seen, the deed does not on its face disclose to whom the five hundred dollars is to be paid. It is awkwardly written, but we feel sure that your Honor after a careful investigation of the evidence herewith filed, will reach the same conclusion that we have, to wit, that it was to be paid to the two boys not receiving any land, D.W. and J.K.P., which has been fully done, either by John in his life, or by the administrator since his death. Your commissioner therefore reports that there is no liability against the estate of the said John J. Newberry for five hundred dollars or any other sum due on the purchase price of land conveyed to him by his father and mother by deed of October 10th, 1887.

H.T. Fergusson files with his settlement with the commissioners of accounts a receipt for \$21.09 which purports to be a receipt in full of all claims against the estate of the said John J. But there can be no doubt that D.B. Newberry only meant this to cover what the administrator had already paid, and what was designated in the settlement as "small personal claims." D.B. Newberry undoubtedly thought that if he had any claim for oney on land matters that it was not what would be called "personal claims, but would savor of realty in some way.

The \$103.33 note filed with the plaintiff bill and claimed as as security debt your commissioner thinks is clearly one of the joint notes excuted in lieu of the land notes, as above explained.

With the exceptions as hereset out your commissioner reports that H.T. Fergusson has, so far as he has been able to ascertain, fully and completely settle the business as administrator of the estate of J.J. Newberry, deceased, and is in no way liable.

Your commissioner begs to say that from the demeanor of J.B. West and S.M. Newberry their evidence has no weight with him, basing this conclusion on mental incapacity, &c., and he does not consider them worthy of credit by the court.



Your commissioner begs to report that for the time he has been actually employed in the case his fee is \$50.00. He wishes to say that if he had charged strictly for the time as allowed by law, his fee would have been much larger.

Respectfully submitted.

*E. M. R. Ewing,*

Special Commissioner.

*Ads.*

Your Commissioner herewith files as a basis for the above conclusions the depositions of E.A. Robinett, J.D. Newberry, H.T. Ferguson, J.K.P. Newberry, W.V. Glass, J.W. Hall, Leah Newberry, Mariah Newberry, D.B. Newberry, H.W. Horton, Sr., H.W. Horton, Jr., G.W. Hickam, William Hickam, Frank Glass, and J.B. West, all of which were duly taken to enable your commissioner to properly determine the questions submitted to him.

*E. M. R. Ewing,*

Special Commissioner.

The foregoing report is excepted to in as far as it allows D.B. Newberry the sum of \$100.00 or any other sum on account of one payment on the money land, which was purchased jointly by the said D.B. & J.B. Newberry. Reason:

- 1<sup>st</sup> The claim is barred by the statute of limitations. The last payment having been made more than 5 years before the institution of this suit.
2. There is no sufficient evidence that D.B. Newberry ever paid anything more than his one half of the purchase price of said land.
3. The witnesses attempting to set up said claim.



was introduced after the case was closed  
in chief.

4 Because if any over payment was made  
by D B Newbury there is no evidence  
whatever that it was not repaid by the  
said J. J. Newberry in his lifetime.  
The said D. B. Newbury was on the stand  
and he does not even intimate that any  
thing is due him on said claims.

5 The evidence clearly shows that D B New  
bury got more than his share of said  
land especially the conveyance to S M  
Newbury, of 35 acres of the Worley land.

6<sup>th</sup> for other reasons to be assigned at bar  
June 4<sup>th</sup> 1894

Duncan T. Hyatt for  
Defts.



D. B. Newberry  
r. f. Comm. Rept.

H. T. Ferguson, et al

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Filed May the 24<sup>th</sup>  
1874 A. B. Munnay  
Clk

Communcion  
per \$50.00



John J. Newberry, deceased,

Dr. To Daniel B. Newberry.

|       |                              |            |             |                |
|-------|------------------------------|------------|-------------|----------------|
| 1887. | To 3 bushels wheat           | 1.00       |             | 3.00           |
|       | " 3 "                        | short corn | 35          | .75            |
|       | " 1-2 "                      | Seed corn  |             | .25            |
|       | " 14 1-2 bushels corn loaned |            |             | 7.25           |
|       | " cash loaned to pay taxes   |            |             | 3.00           |
| 1888  | " 1 hog sold him             |            |             | 5.00           |
| 1889  | " cash loaned him            |            |             | 5.00           |
|       |                              |            |             | <u>\$24.25</u> |
| 1888  | Credit by cash               |            | \$1.50      |                |
| 1891  | " wheat of H.T. Ferguson     |            | <u>5.00</u> | <u>6.50</u>    |
|       | Bal due Jan. 1st 1892.       |            |             | <u>\$17.75</u> |

Virginia, Lee County, to wit:

This day personally came before A.J. Litton a Justice of the Peace in and for Lee County Va. Daniel B. Newberry and made oath that the above account of seventeen dollars and seventy five cents against John J. Newberry is just and true and unpaid and that the bal due is \$17.75 after allowing all credits paid on same. Given under my hand this the 20th day February 1892.

A. J. Litton, J. P.

Virginia, Lee County, to wit:

This day personally came James K. P. Newberry before me A. J. Litton, a Justice of the Peace in and for Lee County, Va., and made oath that he knows of his own knowledge that the within account as charged against John J. Newberry is all correct and just except the two first items charged in said account which I have no knowledge of, but from my knowledge of the account I believe the whole account of \$17.75 to be just and true and unpaid. Given under my hand this the 20th day of Feby. 1892.

A. J. Litton, J. P.

May 30th 1892.

Received of H. T. Ferguson admr of the estate of John J. Newberry, deceased the sum of fourteen dollars \$14.00 in full of account proven against the said John J. Newberry.

Daniel B. Newberry.



Mary J. Ferguson

ads. & Exhibit

Daniel B Newberry

"1"



June the 18th 1892.

Received of Henry T. Ferguson, Admr., of the estate John J. Newberry, decd., the sum of fifty dollars \$50.00 the amt. of note I held against the said John J. Newberry.

James Newberry.

Received January 25th 1893 of H. T. Ferguson one hundred and fifty two dollars and sixty five cents as administrator of John J. Newberry, decd., in full of the one hundred and fifty dollars mentioned in deed made by Daniel B. Newberry to John J. Newberry.

Wm. V. Glass

Eliza J. Glass.

125¢ of the above receipt was paid by Mary J. Newberry the widow in a buy more leaving only \$27.65 paid by me out of estate money January 25 1893

H. T. Ferguson, Admr.



Mary J. ~~Thompson~~

ads. { Exhibits.

Daniel B. Newberry.

3" & 4"



Virginia, Lee County, to wit:

On this the 3rd day of June 1892 personally appeared before me E.N. Sword a Justice of the Peace of the said County Leah Newberry in said County who being by me duly sworn according to law, states, in relation to the account of D.B. Newberry against the estate of J.J. Newberry for \$27.16 for one half of the timber sold by the said J.J. Newberry to J.W. Glass in the year 1890 that she on or about Oct 1890 heard the said D.B. Newberry and the said J.J. Newberry in conversation about the said timber, that the said D.B. Newberry sold to the said J.J. Newberry that he the said D.B. Newberry had control of the land upon which the said timber grew during his life and that he would not allow the said J.J. Newberry to sell the said timber to J.W. Glass or any one unless he the said D.B. Newberry got one half of the money which it brought and that in answer to the foregoing the said J.J. Newberry said he would sell the timber to J.W. Glass and that he the said D.B. Newberry should have part of the money which it brought. Leah Newberry, signed in the presence of G.W. Hickam and W.W. Sage E.N. Sword, J. P.

This witness adds under oath before me the said E.N. Sword that the said J.J. Newberry at her house in the last part of 1890 or first part of 1891 when he paid James Newberry \$5.00 on being asked where he got so much money he answered that J.W. Glass had paid him \$25.00 on timber but that he had not told his father D.B. Newberry about getting the money for he wanted his father to wait until the balance was paid before he got his part. E.N. Sword, J.P.

Virginia Lee County, to wit:

On this the 3rd day of June 1892 D.B. Newberry after being duly sworn in said County, states that his accompanying account of \$27.16 against the estate of J.J. Newberry for one half of timber sold to J.W. Glass in 1890 is just and true and unpaid. Daniel B. Newberry E.N. Sword, J.P.

|                                                                                                                                                                                     |             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1892. April The estate of John J. Newberry to Daniel B. Newberry Dr.                                                                                                                |             |
| To 20701 ft. poplar timber sold to J.W. Glass by the said J.J. Newberry in the year 1890 at \$2.00 per M. ft. \$41.40, one half of which the said D.B. Newberry was to have         | \$20.70     |
| " 1426 ft. Walnut timber sold as above to the said J.W. Glass in the year 1890 by the said J.J. Newberry for \$9.00 per M. ft. one half of which the said D.B. Newberry was to have | 6.46        |
|                                                                                                                                                                                     | <hr/> 27.16 |

\$25.00 of the above amount was paid to the said J.J. Newberry in the fall of 1890 and the ballance \$29.32 was paid to H.T. Ferguson, Admr. of the said J.J. Newberry by the said J.W. Glass in or about April 1892 Daniel B. Newberry.

Sept. 6th 1892.

Received of Henry T. Ferguson, Admr. of the estate of John J. Newberry the sum of twenty one dollars and nine cents the amount in full of all dues and accounts against the said John J. Newberry, decd. Given under my hand this the day and date above written.

Daniel B. Newberry



20  
27  
47

Mary J. Ferguson

ads.  $\frac{1}{2}$  Exhibit

Daniel B. Newberry

"2"



\$150.00

One or by the first day of January, eighteen hundred and eighty three we or either of us bind ourselves, to pay James Worley or his Agent, one hundred and fifty Dollars, in Lawful Money, for value received, of him, This note given for Land. Witness my hand and Seal. This third day of October, 1881. This note draws, interest from the first day of January, 1882 to Jan, 1883.

\$150.00

One or by the first of January eighteen hundred and eighty four, we or either of us bind ourselves, to pay James Worley or his Agent, one hundred and fifty Dollars, for value received of them. This note given for Land. Witness my hand and Seal. This 3rd, day of October, 1881.



1885 Feb. 16 By cash \$86.00

7

Received of the cash  
to 3 notes of \$300.00  
Jas. H. W.ley.

X



Daniel B. Newberry, Plt'ff.

vs.

Henry T. Fergusson, Deft.

*et al.*

} *In Chancery*

<sup>1</sup>  
Pursuant to decree entered in the above cause on the 15th day of March, 1894, I, the undersigned special commissioner, will sit in my office in Jonesville, Va., on the 30th day of April, 1894, for the purpose of convening the creditors of John J. Newberry, deceased, if any, and ascertaining the amount of the indebtedness of the estate, to whom due, and the priorities, &c., and for the purpose of ascertaining further whether or not H. T. Fergusson has duly administered the estate of the said decedent, and properly accounted for all sums received by him, his standing with the estate, and whether or not he has made the required settlement with the proper commissioner. All creditors of the estate, and all parties interested in these investigations, will take due notice of the time and place of my sitting, and be present.

I am also directed to hear and reduce to writing any matter deemed proper to be so treated by myself or any one properly interested. This April 19th, 1894.

*E. H. R. Ewing,*  
Special Commissioner.



TORNEY AT LAW,



Gainesville, Tex.

189

E. H. R. C.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*J. T. Ferguson* Admr of  
*John J. Newberry* decd, *Mary Newberry* widow  
of said *John J. Newberry*, *Buna*<sup>3</sup> *Newberry* and *Palmer*  
*Newberry*<sup>4</sup>

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said  
Court on the *first* Monday in *January*, 189*4*, to answer a bill in Chancery,  
exhibited against *them* in our said court by *Daniel B.*  
*Newberry*

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *6<sup>th</sup>* day of *Decr.* 189*3*, and in the *11*<sup>*th*</sup> year of  
the Commonwealth.

*A B Munsey* Clerk.



D. B. Newberry

US.

{ SUBPENA  
IN CHANCERY.

& et als

H. T. Furguson admr

J. & B. M. G. Ely p. q.

To 1st Jan'y Rules 1894

Circuit Court.

Executed by delivering an  
office copy of the within Sp  
in cly to H. T. Furguson  
Mary Newberry Bana New  
berry and Palmer Newberry  
this December the 14th 1893  
H. P. Aringtons Dept  
for C. E. Flanary S. L. C.